PUBLIC PROSECUTOR

v.

PADI ABDULLAH

HIGH COURT BORNEO
MOHD. NOOR AHMAD J
[CRIMINAL TRIAL NO. 24 OF 1984]
18 NOVEMBER 1988

CRIMINAL PROCEDURE: *Charge of trafficking in a dangerous drug - Accused caught with bag containing in 856.1 grammes of cannabis - Statutory presumption that he was trafficking - No evidence to rebut presumption.*

EVIDENCE: *Agent provocateur - Corroboration - Section 40 Dangerous Drugs Act 1952.*

The accused was charged with trafficking 856.1 grammes of cannabis, a dangerous drug which was an offence under s. 39B(2) of the said Act. The accused was caught by the police with a bag which contained the said drug which was handed to him by an *agent provocateur.* The police had acted on information received from the said *agent provocateur.* The accused's version was that he had no knowledge of the said drug as he alleged that the said *agent provocateur* had thrown the said bag to him and had run away. He also alleged that when the police assaulted him he had shown them the said bag.

Held:

[1] There was a statutory presumption that the accused was trafficking in a dangerous drug as he was caught carrying a bag which contained the said drugs. The bag was under his custody or control. He was deemed to have in his possession the said drug and to have known the nature of the drug.

[2] The evidence of an *agent provocateur* need not be corroborated as provided by s. 40A, Dangerous Drugs Act 1952. The evidence by the police witnesses that the accused was caught with the said bag was accepted. The accused's version could not be believed as he had no reason to tell the police about the said bag if he had not known its contents. Further, since the said bag was an ordinary plastic bag, its contents could be seen. The accused had not rebutted the presumptions on the balance of probabilities.

[Accused found guilty & sentenced to death.]

Legislation referred to:
Dangerous Drugs Act 1952, ss. 2, 37(d), (da)(vi), 39B(2), 40A

For the DPP - Abdul Gani Patail
For the Accused - P.K. Lim; M/s. P.K. Lim & Co.

JUDGMENT

Mohd. Noor Ahmad J:

The accused was charged as follows:

> That you on 12 February 1984, at about 9p.m. in front of the Ann Kwai Club, Jalan Kenanga, in the Federal Territory of Labuan, Malaysia, did traffic in a dangerous drug to wit 856.1 grammes of cannabis on your own behalf and that you thereby committed an offence under s. 39B(1)(a) of the Dangerous Drugs Act 1952 (Act 234) and punishable under s. 39(2) of the said Act.

This is the case for the prosecution. On 11 February 1984, at about 7.30 p.m. the police was informed by PW5 that the accused wanted to sell ganja to him. Upon receipt of such information, the police decided to lay a trap. In pursuit thereof, a plan was made for PW5 to arrange for the sale to take place somewhere near Ann Kwai Club, Jalan Kenanga, Labuan. On 12 February 1984 at about 7 p.m., a party of police officers, led by PW2 laid on ambush in front of Ann Kwai Club. Visibility was good. At about 9 p.m. the accused and PW5 were seen walking abreast coming from the direction of Labuan Emporium and heading towards Ann Kwai Club. The accused was seen carrying a plastic bag. After a signal from PW5 the police party closed in and PW6 arrested the accused and seized the bag from him. PW5 ran away as planned. The bag was opened on the spot and found to contain cannabis, the subject matter of the charge.

On the facts, it is manifestly clear that the accused was caught red-handed to have in his custody or under his control the bag which contained the drug. That being the case, by reason of the provisions of s. 37(d) of the Act he shall be deemed to have in his possession the drug and to have known the nature of such drug, until the contrary is proved. Further, having regard to the quantum, by virtue of the provisions of s. 37(da)(vi) of the Dangerous Drugs Act he shall be presumed, until the contrary is proved, to be trafficking in the said drug. In fact, the act of carrying itself falls under the definition of "trafficking" in s. 2.

I have no reason to doubt the truth of the testimonies of the members of the police party viz: PW2 PW3 and PW6 though there are apparent differences in their evidence in respect of (i) in which hand the accused was carrying the plastic bag at the relevant time, and (ii) whether the accused and PW5 were seen near Ann Kwai Club building earlier at 7 p.m. that night. I regard these differences as minor differences attributable mainly to difference in recollection which do not affect their credibility. With regard to PW5 he is not an accomplice since he had made himself an agent for the prosecution before the actual commission of the offence [*Santhasivam & Ors. v. PP* [1949] 15 MLJ 71]. There is no doubt that he is an *agent provocateur*. Generally, the Court is always wary in accepting the evidence of an *agent provocateur* but in this case the Legislature under s. 40A of the Dangerous Drugs Act 1952 had provided that the evidence of any *agent provocateur* shall be admissible and treated as any other evidence from any ordinary witness. By virtue of this section, the evidence of an *agent provocateur* needs no corroboration to found a finding by the trial Court, however, PW5 was amply corroborated by the evidence PW2, PW3 and PW6. Hence, I found that a *prima facie* case had been established against the accused and called for his defence.

The accused deposed that he knew PW5 and used to meet him on several occasions in Labuan town before the night of the incident. That night he went for a walk in town with PW5. He denied carrying the plastic bag at the time of the arrest but alleged that PW5 was carrying a black plastic bag and when PW5 ran away, PW5 threw the bag to him. After the arrest upon being assaulted by the police, he led the police party to Jalan Ranca-Ranca and to a spot near Southern Hotel where the plastic bag was alleged to have been taken but nothing was found there. In short, his defence was that he had no knowledge of the drug at all.

Having deliberated on his entire defence, I did not consider the accused person's story to be reasonably true or consistent with his innocence. The conclusion is based on these arguments. Firstly, his contention that he was not carrying the plastic bag was a mere denial having regard to the evidence of PW2, PW3, PW5 and PW6 on this point to the contrary,

that is to say, he was caught red-handed to have in his custody or under his control the bag which contained the drug. Secondly, the alleged assault by the police was a bare assertion. If he really had no knowledge of the plastic bag and its contents there was no reason for him to tell the police party that the bag was taken from Jalan Ranca-Ranca and from the spot near Southern Hotel and to lead the police party to those places. By necessary implication, he must have picked up the cannabis from both or any of the said places otherwise he would have told the police party so. This fact confirms PW5's evidence who said he waited for the accused to fetch the cannabis. Lastly, the bag was an ordinary plastic bag which one could easily know its contents by merely opening it.

Hence, the accused had not rebutted the aforesaid statutory presumptions on the balance of probabilities. Therefore, the prosecution had proved its case beyond reasonable doubt and I found the accused guilty of the offence for which he was charged and convicted him. And sentenced him to death.

The accused appeals.

Also found at [1989] 1 CLJ 816